

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Juan Arango	Team: Squad #09	CCRB Case #: 202105543	<input type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Sunday, 09/12/2021 11:45 AM	Location of Incident: Inside Central Park at East 62nd Street and 5th Avenue; at the CCRB	18 Mo. SOL 3/12/2023	Precinct:		
Date/Time CV Reported Wed, 09/15/2021 4:52 PM	CV Reported At: CCRB	How CV Reported: Call Processing System	Date/Time Received at CCRB Wed, 09/15/2021 4:52 PM		

Complainant/Victim	Type	Home Address

Witness(es)	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Malcolm Liu	08825	932906	CPK PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. PO Kevin McMahon	07453	939000	CPK PCT
2. PO Benjamin Beiro	07399	953673	CPK PCT
3. PO Nicholas Noto	20757	959848	CPK PCT

Officer(s)	Allegation	Investigator Recommendation
A . POM Malcolm Liu	Discourtesy: Police Officer Malcolm Liu acted discourteously toward § 87(2)(b)	
B . POM Malcolm Liu	Abuse: Police Officer Malcolm Liu interfered with § 87(2)(b) use of a recording device.	
C . POM Malcolm Liu	Abuse: Police Officer Malcolm Liu searched § 87(2)(b) recording device.	
D . POM Malcolm Liu	Abuse: Police Officer Malcolm Liu threatened to remove § 87(2)(b) to the hospital.	

Case Summary

On September 15, 2021, § 87(2)(b) filed the following complaint via the CCRB's Call Processing System.

On September 12, 2021, at approximately 11:45 a.m., § 87(2)(b) was inside Central Park, near East 62nd Street and 5th Avenue, in Manhattan, when someone allegedly sprayed him on his face with a toxic chemical. PO Malcolm Liu and PO Kevin McMahon of the Central Park Precinct responded to the incident location. At some point, PO Liu allegedly snatched § 87(2)(b) phone out of his hand as § 87(2)(b) recorded the incident. As a result, the video § 87(2)(b) was recording ended (**Allegation A: Discourtesy – Action, § 87(2)(g)** (**Allegation B: Abuse of Authority – Interference with recording device, § 87(2)(g)** Right after, PO Liu began to manipulate § 87(2)(b) phone as he opened the videos he recorded (**Allegation C: Abuse of Authority – Search of recording device, § 87(2)(g)** At some point, PO Liu told § 87(2)(b) not to call 911 again and that if he called 911 one more time, he would bring an ambulance with him to take him to the hospital (**Allegation D: Abuse of Authority – Threat of removal to hospital, § 87(2)(g)**

At the end, PO Liu and PO McMahon left the scene. § 87(2)(b) was not issued any summonses, arrested or taken to the hospital.

The investigation obtained Body-Worn Camera in regards to this incident (**Board Review 01**).

§ 87(2)(b) provided a cellphone video he recorded during the incident (**Board Review 02**).

Findings and Recommendations

Allegation (A) Discourtesy: Police Officer Malcolm Liu acted discourteously toward

§ 87(2)(b)

Allegation (B) Abuse of Authority: Police Officer Malcolm Liu interfered with § 87(2)(b) use of a recording device.

During his CCRB interview, § 87(2)(b) explained that after PO Liu and PO McMahon responded to the incident location, he began to record the incident with his cellphone (**Board Review 03**). As he spoke with PO Liu and PO McMahon, PO Liu approached him, snatched the phone out of his hand and asked him why he was recording. As a result of PO Liu's action, the video recording ended. § 87(2)(b) then tried to snatch his phone out of PO Liu's hand.

§ 87(2)(b) provided a cellphone video he recorded to the investigation (**Board Review 04**). The video begins with § 87(2)(b) standing in front of PO McMahon, who is standing next to PO Liu. Both officers are standing approximately two or three feet away from § 87(2)(b). PO McMahon speaks with § 87(2)(b) about what the doctors have said to § 87(2)(b) in the past in regards to people spraying him on the face. PO McMahon then refers to a previous interaction he had with § 87(2)(b) during which, § 87(2)(b) told him that the medical staff had turned him away. At the 00:56 seconds mark, § 87(2)(b) points his phone towards PO Liu, who then says to § 87(2)(b) "What's on your phone? Let me see" and walks forward towards § 87(2)(b). Right after, the cellphone video recording ends prior to PO Liu getting closer to § 87(2)(b).

The investigation obtained PO Liu's BWC footage which captures the moment prior to PO Liu walking closer to § 87(2)(b) (**Board Review 05**). PO Liu's BWC footage begins with PO Liu standing next to PO McMahon and in front of § 87(2)(b) while PO McMahon speaks with § 87(2)(b). § 87(2)(b) is holding with his left hand a black cellphone at the chest level pointing the lens of the camera towards the officers. No audio is captured at this point. At the 10:52:56 timestamp, PO Liu extends his right arm towards § 87(2)(b).

§ 87(2)(b) and walks in his direction. § 87(2)(b) immediately looks at the screen of his cellphone and uses his right thumb for what appears to be pressing a button on the screen. After approaching § 87(2)(b) PO Liu stands on his right side as § 87(2)(b) moves his left arm towards his left side as the cellphone is captured being on the home screen. § 87(2)(g) § 87(2)(b) cellphone and PO Liu's BWC footage capture the time frame in which § 87(2)(b) stated the discourtesy and interference with recording allegations occurred and do not show PO Liu snatching the phone out of § 87(2)(b) or ending the video recording. § 87(2)(g)

Allegation (C) Abuse of Authority: Police Officer Malcolm Liu searched § 87(2)(b) recording device.

During his CCRB interview, § 87(2)(b) stated that after PO Liu grabbed his phone, he observed PO Liu manipulating his cellphone and moving his finger on the screen to open the videos he had recorded (**Board Review 03**). PO Liu told § 87(2)(b) "You are recording. I am also recording." After § 87(2)(b) got his phone back, he observed that the phone's photo gallery was opened.

At the 10:52:59 timestamp of PO Liu's BWC footage, PO Liu extends his right hand towards § 87(2)(b) iPhone; after which, § 87(2)(b) moves his phone away from PO Liu's hand (**Board Review 05**). However, PO Liu eventually grabs § 87(2)(b) cellphone from the upper right side of the screen, using his right thumb and his index finger. Upon making physical contact with § 87(2)(b) cellphone, PO Liu pulls it towards him as § 87(2)(b) continues holding onto the cellphone. PO Liu then uses his left hand and grabs the bottom of the cellphone and continues pulling it towards him. However, § 87(2)(b) does not let the phone go. PO Liu then uses his left thumb and presses and opens the camera app, located on the upper right side of the screen. It is unknown what § 87(2)(b) or PO Liu are saying at this point. However, § 87(2)(b) looks towards PO Liu and appears to be saying something to him. PO Liu eventually uses his left thumb to click on the lower left side of the screen, which opens the photo gallery. § 87(2)(b) says something else to PO Liu and moves the cellphone away from PO Liu as PO Liu takes a step back. § 87(2)(b) makes some hands gestures as he speaks with PO Liu and PO McMahon who is now captured standing next to PO Liu's right. At the 10:53:46 timestamp, PO Liu tells § 87(2)(b) "I will turn my camera." Right after, they talk about § 87(2)(b) 911 report.

During this CCRB interview, PO Liu stated that he told § 87(2)(b) "I don't think you are recording" and pressed the camera icon and hit the record button for § 87(2)(b) as he said, "You are recording. I am recording" (**Board Review 06**). When asked why he did this, PO Liu said that it was just a spur of the moment, and he did not want § 87(2)(b) to feel neglected because he and PO McMahon were recording the incident. PO Liu added that he wanted to help § 87(2)(b) to record the incident. When asked if § 87(2)(b) made any statements before he took these actions or asked for his assistance on how to operate the phone, PO Liu said no. PO Liu was then presented with his BWC footage and his attention was brought to his actions taken on § 87(2)(b) cellphone. When asked if this video brought back his recollection as to what actions he took on § 87(2)(b) cellphone, PO Liu said yes. When asked if he ever asked § 87(2)(b) to allow him to see his cellphone, PO Liu said no.

Patrol Guide Procedure 218-50 (Board Review 07) – Officers must have a search warrant, person's consent, or some exigent circumstances must exist in order to lawfully search for information stored in a cellular phone.

§ 87(2)(g)

Allegation (D) Abuse of Authority: Police Officer Malcolm Liu threatened to remove § 87(2)(b) to the hospital.

It is undisputed that § 87(2)(b) called 911 to report that someone had sprayed him on his eyes with a chemical, but PO Liu and PO McMahon did not find any evidence that the alleged crime had taken place and § 87(2)(b) eventually refused medical attention. It is also undisputed that PO McMahon had responded to previous 911 calls made by § 87(2)(b) involving the same unfounded allegations. It is undisputed that § 87(2)(b) presented signs of being mentally ill as he alleged that his former landlord financed a plot against him and had sent “thousands” of people to harass him and spray him with a toxic poison.

At the 10:54:09 timestamp of PO Liu’s BWC footage, PO Liu tells § 87(2)(b) “I am recording to let you know that nothing happened to you. You keep on doing this, we are going to send you to the hospital to get mentally...” (Board Review 05). At the 10:54:49 timestamp, PO McMahon asks § 87(2)(b) “Right now, you don’t need medical attention, correct?” § 87(2)(b) replies, “Yes, sir.” Right after, PO McMahon cancels EMS over the radio. At the 10:55:16 timestamp, PO Liu tells § 87(2)(b) “As far as right now, you don’t need EMS to check your eyes, right?” § 87(2)(b) says no. At the 10:57:14 timestamp, PO Liu tells § 87(2)(b) that they are going to leave to look for someone who is missing. § 87(2)(b) replies, “Okay. No law for me.” In response, PO Liu says to him, “You call again for the same thing and nothing happened, then you are going to go to the hospital, I guarantee you. I promise you; I will get you checked out from head to toes. alright? If you call again for the same thing. Take care.” PO Liu begins to walk away and the video ends.

During this CCRB interview, PO Liu explained that § 87(2)(b) did not appear to have been sprayed with any chemicals on his eyes given that he did not have any redness (Board Review 06). PO Liu acknowledged offering medical attention to § 87(2)(b) multiple times and said that § 87(2)(b) refused the offer. PO Liu described § 87(2)(b) demeanor as not being clear and explained that he was mumbling about different things. PO Liu stated that § 87(2)(b) had a sign about an individual and poison control but PO Liu did not understand much of what § 87(2)(b) was saying in regards to the sign. PO Liu stated that § 87(2)(b) would not answer his questions and just jumped from one topic to another. PO Liu independently stated that at the end, he told § 87(2)(b) that he could not keep calling 911 for the same issue because he was abusing the system and that if he called again and nothing happened, they would send him to the hospital. PO Liu explained that officers are allowed to warn people about not abusing the 911 system and that given that § 87(2)(b) did not have a normal behavior, he believed § 87(2)(b) probably needed to be evaluated at the hospital. PO Liu agreed with his counsel’s statement about warning § 87(2)(b) to deter him from making 911 calls of the same nature, prevent him from making a false report and giving him the necessary mental health help. PO Liu did not believe § 87(2)(b) was a threat to himself or to others during this incident.

Patrol Guide Procedure 221-13 (Board Review 08) states that an officer must take into protective custody and have removed to the hospital in an ambulance, any person who appears to be mentally ill or temporarily deranged and is conducting himself in a manner which a police officer reasonably believes is likely to result in serious injury to himself or others.

Although it is undisputed that § 87(2)(b) showed signs of mental illness, PO Liu never believed § 87(2)(b) to be a threat to himself or to others. § 87(2)(g)

Civilian and Officer CCRB Histories

- This is the first CCRB complaint to which § 87(2)(b) has been a party (**Board Review 09**).
- PO Liu has been a member of service for 18 and has been a subject in five CCRB complaints and 12 allegations, of which one was substantiated:
 - **200817795** involved substantiated allegations of Stop against PO Liu The Board recommended charges and the NYPD imposed instruction. § 87(2)(g)

Mediation, Civil, and Criminal Histories

- This complaint was not suitable for mediation.
- As of March 14, 2022, the New York City Office of the Comptroller has no record of a Notice of Claim being filed in regards to this complaint (**Board Review 11**).
- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

Squad: 9

Investigator:	<u>Juan Arango</u>	<u>Inv. Juan Arango</u>	<u>11/04/2022</u>
	Signature	Print Title & Name	Date

Squad Leader:	<u>Wassim Abedrabbo</u>	<u>IM W. Abedrabbo</u>	<u>11/07/2022</u>
	Signature	Print Title & Name	Date

Reviewer:	<u></u>	<u></u>	<u></u>
	Signature	Print Title & Name	Date